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UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

FOLEY & LARDNER LLP
150 EAST GILMAN STREET
P.O. BOX 1497
MADISON WI 53701-1497

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SEP 28 2009

OFFICE OF PETITIONS

In re Application of :
Reunamaki et al. :
Application No. 10/574591 : DECISION ON REQUEST
Filing or 371(c) Date: 04/04/2006 : FOR RECONSIDERATION OF
Attorney Docket Number: : PATENT TERM ADJUSTMENT
088245-1035 :
:

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705," filed July 21, 2009. Applicants submit that the correct patent term adjustment to be indicated on the patent is 602 days, not 559 days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants assert that the application is entitled to an adjustment of 602 days pursuant to 37 C.F.R. §§ 1.702(a)(1) and 1.703(a)(1) rather than 559 days, as indicated by the Determination of Patent Term Adjustment under 35 U.S.C. 154(b).

The application for patent term adjustment is **DISMISSED**.

On April 27, 2009, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 559 days.

On July 21, 2009, applicants timely submitted the present application for patent term adjustment¹. Applicants request review of the Patent Term Adjustment determination based upon an assertion that the Office failed to assess the correct adjustment under to 37 C.F.R. §§ 1.702(a)(1) and 1.703(a)(1). Applicants assert that the PTO used May 17, 2006 as the completion date of all 35 U.S.C. § 371 requirements. Applicants further assert that the 371 requirements were completed on April 4, 2006 and cite in support of this assertion the Filing Receipt dated November 29, 2006; the USPTO's U.S. National Stage Worksheet, and the USPTO's Bibliographic Data Sheet (copies enclosed). Thus, applicants argue that the adjustment pursuant to 37 CFR 1.702(a) one is 602 days, the adjustment commencing June 5, 2007 and ending January 26, 2009, and not 559 days, as indicated in the Determination of Patent Term Adjustment under 35 USC 154(b).

A review of the record reveals that Applicants have incorrectly calculated the period of adjustment under 37 C.F.R. §§ 1.702(a)(1) and 1.703(a)(1) for the Office's failure to mail at least one of a notification under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151 not later

¹ Office records show that the Issue Fee payment was received in the Office on July 21, 2009.

than fourteen months after the date on which the application was filed under 35 U.S.C. 111(a) or fulfilled the requirements of 35 U.S.C. 371 in an international application (Emphasis supplied). Office records reveal, as confirmed by the Notice of Acceptance of Application Under 35 U.S.C. 371 and 37 CFR 1.495, mailed November 29, 2006, that the “Date of Completion of all 35 U.S.C. 371 Requirements,” is May 17, 2006.

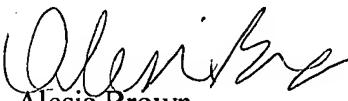
Applicants assert that the period of adjustment under 37 C.F.R. §§ 1.702(a)(1) and 1.703(a)(1) is April 4, 2006; however, as indicated on the Notice of Acceptance of Application Under 35 U.S.C. 371 and 37 CFR 1.495, mailed November 29, 2006, the date of April 4, 2006, is the “Date of Receipt of 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) Requirements.” As stated, this date is the “Date of Receipt” of 35 U.S.C. requirements, and is not the “Date of Completion of all 35 U.S.C. 371 Requirements.” As provided in the 35 U.S.C. § 154(b)(1)(A)(i)(II), the relevant period is “the date on which an international application fulfilled the requirements of section 371 of this title.”

Moreover, the MPEP at 1893.03(b) provides that the “Date of Completion of all 35 U.S.C. 371 Requirements” included on the NOTIFICATION OF ACCEPTANCE OF APPLICATION UNDER 35 U.S.C. 371 AND 37 CFR 1.495 (Form PCT/DO/EO/903) is relevant for purposes of patent term adjustment under 35 U.S.C. 154(b)(1)(A)(i)(II) and 37 CFR 1.702(a)(1) when the USPTO has failed to mail at least one of a notification under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151 not later than fourteen months after the date on which the requirements under 35 U.S.C. 371 were fulfilled. In the instant application, this date is 30 months from the priority date.

In view thereof, the patent term adjustment at the time of the mailing of the Notice of Allowance is 559 days ((559 days of PTO delay reduced by zero (0) days of applicant delay)), subject to any terminal disclaimer.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required. As submission of the fee set forth 37 CFR 1.18(e) is a prerequisite prior to treatment on the merits of the request for reconsideration of the patent term adjustment, applicants’ request for refund here DISMISSED.

Telephone inquiries specific to this matter should be directed to Attorney Derek Woods at (571) 272-3232.



Alesia Brown
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy